

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE**

10<sup>TH</sup> GEAR LLC, on behalf of itself and  
all others similarly situated,

Plaintiff,

vs.

PACCAR, INC., a Delaware Corporation,

Defendant.

Case No. 2:23-cv-01933

**CLASS ACTION COMPLAINT**

**DEMAND FOR JURY TRIAL**

For its Class Action Complaint against Defendant PACCAR, Inc.  
("PACCAR"), Plaintiff 10<sup>th</sup> Gear, LLC ("Plaintiff"), individually and on behalf of all  
others similarly situated, alleges the following based upon personal knowledge as to  
Plaintiff and Plaintiff's own acts, and upon information and belief as to all other  
matters based on the investigation conducted by Plaintiff's attorneys. Plaintiff  
believes that substantial evidentiary support will exist for the allegations set forth  
herein after a reasonable opportunity for discovery.

**INTRODUCTION**

1  
2 1. This is a class action lawsuit brought by Plaintiff on behalf of itself and a  
3 nationwide class of current and former owners and lessees of tractor-trailer and vocational  
4 trucks manufactured by PACCAR, equipped with the EPA2021 MX-13 diesel engine (the  
5 “MX-13 engine”) made by PACCAR engine company (“PEC”), and sold through PACCAR  
6 subsidiaries Kenworth Truck Company and Peterbilt Motors Company under the “Kenworth”  
7 and “Peterbilt” nameplates beginning in model year 2021.

8 2. The fuel system in the MX-13 engine installed in these trucks is defective  
9 because the fuel injector tends to clog without warning, severely disrupting the engine’s  
10 operation (the “Fuel System Defect”).

11 3. PACCAR knew or should have known the fuel system in the MX-13 engine  
12 installed in these trucks was defective at the time these trucks were sold, but chose to conceal  
13 this information from its customers, including Plaintiff herein.

14 4. In choosing to conceal this information, PACCAR caused Plaintiff and the  
15 Class to purchase these trucks when they otherwise would not have purchased them at all or  
16 would not have purchased them for the amount they paid.

17 5. In choosing to conceal this information, PACCAR caused Plaintiff and the  
18 Class to unknowingly undertake risks they otherwise would not have undertaken, including  
19 risks to their financial wellbeing, and risks to the safety and welfare of their drivers, the  
20 occupants of other vehicles and the general public.

21 6. PACCAR’s conduct violates the law of the State of Washington, where  
22 PACCAR has its headquarters.

23 7. As of the date of this filing, PACCAR has still not revealed to its customers,  
24 the trucking industry or the general public that the fuel system used with the MX-13 engine is  
25 defective. Instead, on information and belief, PACCAR continues installing defective MX-13  
26 engines and fuel systems in tractor-trailer and vocational trucks and selling those trucks to  
27 Class members even though PACCAR is and has been aware that the Fuel System Defect

1 could cause the MX-13 engine to fail at any moment, necessitating immediate repairs  
 2 resulting in costly downtime, stranding drivers and compromising the safety of the general  
 3 public.

4 8. While PACCAR has covered these repairs under its Basic Engine Warranty,  
 5 thereby acknowledging the Fuel System Defect is a “Warrantable Failure,” it has not cured  
 6 the defect. Instead, PACCAR has recommended a temporary fix for a continuing problem  
 7 that leaves these trucks subject to repeated and unpredictable mechanical breakdowns.

8 9. PACCAR’s decision to sell these trucks to unsuspecting customers without  
 9 revealing the existence and extent of the Fuel System Defect was wrongful and  
 10 unconscionable. Even more unconscionable was PACCAR’s effort to limit its customers’  
 11 remedy to repeated and ineffective repairs, making no provision for the significant downtime  
 12 and associated losses and expenses customers incur each and every time a repair is necessary.

13 10. Plaintiff brings this action for violation of the Washington Consumer  
 14 Protection Act, Wash Rev. Code. Ann. § 19.86.010, *et seq.*, and breach of express warranty.

### 15 **THE PARTIES**

16 11. Plaintiff 10<sup>th</sup> Gear, LLC (“10<sup>th</sup> Gear”) is a limited liability company organized  
 17 and existing under the laws of the State of Kansas with a principal place of business at 4432  
 18 SE U.S. Highway 40, Tecumseh, KS 66542.

19 12. Defendant PACCAR is a corporation organized and existing under the laws of  
 20 the State of Delaware with a principal place of business at 777 106<sup>th</sup> Avenue N.E., Bellevue,  
 21 Washington 98004. PACCAR manufactures tractor-trailer and vocational trucks and sells  
 22 them in the United States through its subsidiaries Kenworth and Peterbilt under the  
 23 “Kenworth” and “Peterbilt” nameplates.

### 24 **JURISDICTION AND VENUE**

25 13. This Court has jurisdiction over this action under the Class Action Fairness Act  
 26 (“CAFA”), 28 U.S.C. § 1332(d). There are at least 100 members in the proposed Class, the  
 27 aggregated claims of the individual Class members exceed the sum or value of \$5,000,000.00

1 exclusive of interest and costs, and members of the proposed Class are citizens of States  
2 different from the Defendant.

3 14. This Court may exercise general jurisdiction over PACCAR because PACCAR  
4 has its headquarters located in this State. PACCAR designed the EPA2021 MX-13 engine in  
5 Washington, developed marketing materials related to the EPA2021 MX-13 engine in  
6 Washington, drafted the Basic Engine Warranty covering or purporting to cover repairs to the  
7 EPA2021 MX-13 engine in Washington, and directed dealerships and authorized repair  
8 facilities how to handle and not handle warranty claims from Washington.

9 15. Venue in this Court is proper in this District pursuant to 28 U.S.C. § 1391  
10 because PACCAR has its headquarters located in this District and the wrongful conduct  
11 giving rise to this case was directed from this District as set forth herein.

12 **FACTUAL ALLEGATIONS**

13 ***PACCAR and the EPA2021 MX-13 Engine***

14 16. PACCAR is a global technology company that designs and manufactures light-  
15 , medium- and heavy-duty commercial vehicles sold worldwide under the “Kenworth,”  
16 “Peterbilt” and “DAF” nameplates.

17 17. PACCAR focuses on the premium segment of the trucking industry and  
18 promotes its products as delivering “operational excellence and luxury” for its customers.

19 18. PACCAR vehicles can be equipped with diesel engines and other powertrain  
20 components designed and manufactured by PACCAR subsidiary, PEC.

21 19. PEC designs and manufactures engines and components for both PACCAR  
22 vehicles and for vehicles manufactured by various third parties.

23 20. In 2021, PACCAR and PEC introduced the newly-designed EPA2021 MX-13  
24 diesel engine, which was and continues to be offered as an optional power plant in certain  
25 PACCAR trucks carrying the “Kenworth” and “Peterbilt” nameplates.

1           21.     PACCAR represented the MX-13 engine as offering “enhanced durability,”  
2 among other things, resulting in “[m]ore power, longevity, uptime, ease of service and driver  
3 satisfaction.”

4           22.     PACCAR represented the MX-13 engine as being “[b]acked by the longest –  
5 and strongest – major component warranty in the industry.”

6           23.     PACCAR represented the MX-13 engine as an engine “that runs longer,  
7 performs better, and maximizes [the customer’s] productivity.”

8           24.     The following are excerpts from PACCAR’s information materials regarding  
9 the MX-13 engine:



## GREATER RELIABILITY AND MAXIMUM UPTIME

PACCAR is an innovation company, forever advancing the state-of-the-art in heavy duty diesel engines. With the PACCAR MX engines for 2021, virtually every part of the combustion process – and each critical component that helps produce and contain it – was scrutinized, modified, and improved. The objective: To design and produce a heavy-duty engine that not only meets EPA standards and offers unprecedented fuel efficiency, but to also produce an engine that runs longer, performs better, and maximizes your productivity. Mile after mile, day in and day out.

## REDUCED COMPLEXITY AND PERFORMANCE UPGRADES

The new-generation PACCAR MX-13 engine challenges convention and pushes boundaries to produce a less complex, easier-to-service solution that enhances reliability. For example, the fully-encapsulated engine harness – a PACCAR exclusive – protects much better against the elements. Improved routing reduces wiring congestion and block-mounted connectors ensure a stable, stress-free solution. Connections between the engine and vehicle were reduced and further protected from the elements.

25. Repeatedly in its informational materials, PACCAR referenced the increased “uptime” associated with the MX-13 engine, suggesting that trucks equipped with the MX-13 engine would spend more time on the road and less time in the shop.

26. Trucks equipped with MX-13 engines have sold exceptionally well.

27. PACCAR enjoyed a record year in 2022. It delivered 185,900 trucks, and generated record revenues of \$28.82 billion and record net income of \$3.01 billion.

### ***The Fuel System Defect***

28. The representations PACCAR made regarding the MX-13 engine as referenced herein proved less than truthful.

29. Almost immediately after the MX-13 engine was introduced, trucks equipped with the MX-13 engine began experiencing mechanical failures due to a problem with the engine's fuel system.

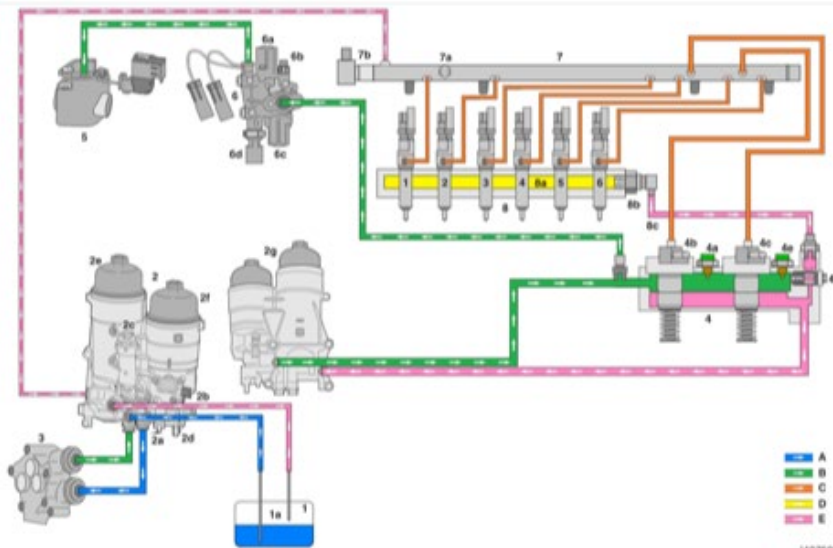
30. A primary component of a fuel system is a fuel injector.

31. A fuel injector is a device used to meter and inject fuel into gasoline and diesel internal combustion engines.

32. When the fuel injector is open, liquid fuel passes through the injector under high pressure and becomes atomized as it exits through the injector's spray tip.

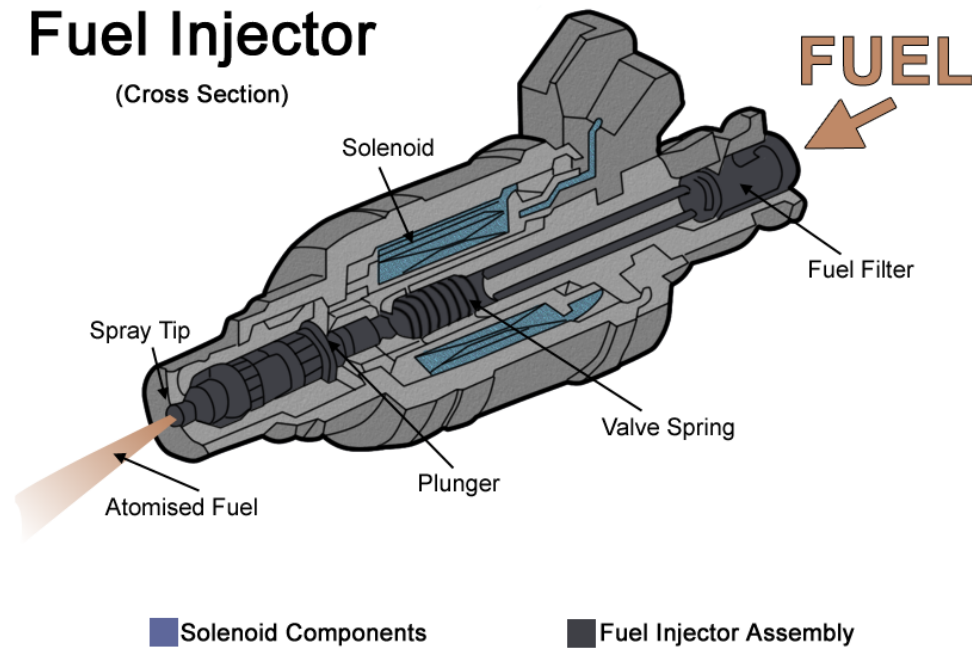
33. The atomized fuel mixes with air and enters the combustion chamber where the mixture is ignited.

34. The following is a basic illustration of a fuel system and its component parts, including the fuel injectors identified as Nos. 1-6:





35. The following is a basic illustration of a sample fuel injector and its component parts:



36. The fuel system in the MX-13 engine is defective because the fuel injector tends to partially or completely clog without warning, preventing fuel from reaching the combustion chamber. This can lead to a multitude of problems, including, but not limited to a severe loss of engine power, shaking or vibration of the vehicle, engine knocking or detonation, lean fuel mixtures, rpm fluctuations and engine failure.

37. The fuel injectors utilized in the MX-13 engine often clog after minimal use and preventative maintenance is of little, if any, help.

38. The Fuel System Defect is a widespread problem with MX-13 engines, the cause of which, on information and belief, is known to PACCAR; however, PACCAR has not yet disclosed this information to PACCAR's customers, the trucking industry or the general public.

39. Based on conversations with repair technicians at authorized PACCAR repair facilities, one possible cause of the Fuel System Defect involves the atomization holes in the



1 internal spray tip (or orifice disk) of the fuel injector. It is thought that during the  
2 manufacturing process for the fuel injectors, the atomization holes were made too small to  
3 allow fuel to pass through the injector properly. As a result, these holes are prone to partial or  
4 complete clogging after a short period of ordinary use.

5 40. Alternatively, it is thought that the fuel system of these engines was designed  
6 and/or manufactured in such a way as to allow contaminants to be introduced into the fuel  
7 supply during routine operation, and that the introduction of these contaminants is responsible  
8 for the fuel injectors clogging.

9 41. The precise cause of the Fuel System Defect remains under investigation by  
10 Plaintiff. This investigation ultimately is expected to involve the testing and analysis of parts  
11 of the fuel system of one or more MX-13 engines by engineering and/or manufacturing  
12 experts.

13 42. The Fuel System Defect threatens the safety of both the driver and the general  
14 public, as the MX-13 engine is typically installed in tractor-trailers used to transport  
15 extremely heavy loads nationwide. When the ability of these trucks to operate and perform as  
16 intended is compromised, they become an inherent danger to anyone in or near them.

17 ***The Basic Engine Warranty and PACCAR's Knowledge of the Fuel System Defect***

18 43. Almost immediately after the MX-13 engine was introduced, PACCAR's  
19 customers began complaining about clogged fuel injectors and bringing their trucks to  
20 authorized repair facilities for repairs.

21 44. PACCAR covered these repairs under the terms of its Basic Engine Warranty,  
22 which is given to customers buying or leasing trucks equipped with PACCAR-manufactured  
23 engines. A true and correct copy of the Basic Engine Warranty is attached hereto as Exhibit  
24 A.

25 45. The Basic Engine Warranty is part of the basis of the bargain and is included in  
26 the purchase price of each vehicle. Customers are not required to pay extra to receive the  
27 Basic Engine Warranty nor are they given the option to refuse the Basic Engine Warranty.

1           46.     Customers, including Plaintiff herein, rely on the existence of the Basic Engine  
2 Warranty in purchasing vehicles equipped with the MX-13 engine.

3           47.     The Basic Engine Warranty is given to customers at or about the time the truck  
4 is delivered.

5           48.     The terms of the Basic Engine Warranty are drafted by PACCAR and are non-  
6 negotiable.

7           49.     The Basic Engine Warranty provides in pertinent part that the MX-13 engine  
8 “will be free from defects in materials and factory workmanship (‘Warrantable Failures’)  
9 appearing under normal commercial use and service during the time or mileage or hour  
10 limitations set forth in the attached Warranty Schedule.” These limitations are 24 months,  
11 250,000 miles or 6,250 hours.

12           50.     In covering repairs to the fuel injectors and related fuel system components of  
13 the MX-13 engine, PACCAR acknowledged the Fuel System Defect was a “Warrantable  
14 Failure” within the meaning of its Basic Engine Warranty.

15           51.     Alternatively, to the extent PACCAR knew or believed the Fuel System Defect  
16 was not a “Warrantable Failure” within the meaning of its Basic Engine Warranty, PACCAR  
17 knowingly and intentionally waived its right to deny warranty coverage based on the terms of  
18 the parties’ agreement and, as a matter of law, is precluded from asserting in this litigation  
19 that the Fuel System Defect is not a “Warrantable Failure” covered by the Basic Engine  
20 Warranty.

21           52.     On information and belief, PACCAR has never denied the Fuel System Defect  
22 was a “Warrantable Failure,” and certainly has never denied the Fuel System Defect was a  
23 “Warrantable Failure” with respect to the warranty claims brought by Plaintiff herein.

24           53.     On information and belief, PACCAR monitored the warranty claims related to  
25 the Fuel System Defect and thereby became aware that it was a widespread problem by late  
26 2021 or early 2022.

1           54. On information and belief, PACCAR also knew there was no immediate fix for  
 2 the Fuel System Defect available. In some cases, faulty injectors could be made temporarily  
 3 operational by cleaning them; however, these same injectors often clogged again,  
 4 necessitating repeated repairs. Contrary to the representations made by PACCAR in its related  
 5 advertising and informational material, these repeated failures of the MX-13 engine have  
 6 resulted in financially crippling downtime for PACCAR customers. PACCAR promised  
 7 increased uptime and less downtime.

8           55. PACCAR's customers complained about the need for these repeated repairs  
 9 and the impact these repeated repairs were having on their businesses. On information and  
 10 belief, PACCAR monitored these complaints, thereby bolstering its knowledge of the  
 11 widespread nature of the Fuel System Defect.

12           56. By March 2022, faced with all this data, PACCAR was compelled to issue a  
 13 Powertrain Service Bulletin to educate its authorized repair facilities about how the Fuel  
 14 System Defect should be addressed. In Bulletin E290, PACCAR told dealers "[i]f a customer  
 15 comes into your dealership and demonstrates the condition above [related to clogged fuel  
 16 injectors], use the attached procedure to clean the fuel injectors" but cautioned this procedure  
 17 "is not a permanent fix." Notably, this information was not shared directly with PACCAR's  
 18 customers.

19           57. Bulletin E290 further confirmed the Fuel System Defect was a "Warrantable  
 20 Failure," as it stated that the procedure outlined therein—a procedure to temporarily unclog  
 21 the fuel injector—would be covered by the Basic Engine Warranty.

22           ***The Basic Engine Warranty Fails of its Essential Purpose and is Unconscionable***

23           58. PACCAR's Basic Engine Warranty purports to sharply curtail the remedies  
 24 available to customers purchasing trucks equipped with the MX-13 engine who experience a  
 25 mechanical breakdown. Indeed, the only remedy for these customers is the repair or  
 26 replacement of "Warrantable Failures."

1           59.     The Basic Engine Warranty fails of its essential purpose because there was and  
2 remains no way to make the MX-13 engine free from defects.

3           60.     The fuel injector cleaning procedure outlined in Bulletin E290 provided only  
4 temporary relief; fuel injectors often clogged again without warning after minimal use,  
5 necessitating additional visits to the repair facility and additional downtime.

6           61.     Besides the cleaning procedure outlined in Bulletin E290, the only option was  
7 to replace the existing fuel injector with a new fuel injector, which also clogged when the  
8 truck was put into service. Again, these failures resulted in additional repairs and additional  
9 downtime.

10          62.     Since no amount of warranty service would cure the Fuel System Defect, the  
11 MX-13 engine could not be made free from defects under the terms of the Basic Engine  
12 Warranty, such that, for example, a long-haul trucker could depend on his truck to not break  
13 down without warning in the middle of nowhere.

14          63.     On information and belief, PACCAR has manufactured or is in the process of  
15 manufacturing replacement fuel injectors and/or other components of the fuel system that may  
16 permanently remedy the Fuel System Defect. But these replacement parts, if they are  
17 available now, were not available at the time the MX-13 engine was introduced or for a  
18 significant time thereafter.

19          64.     The Basic Engine Warranty is unconscionable because it was unilaterally  
20 drafted by PACCAR without negotiation or the opportunity for input from Plaintiff or Class  
21 members; because PACCAR knew about the Fuel System Defect at the time these trucks  
22 were sold—information Plaintiff and the Class did not possess and could not reasonably  
23 obtain—and chose not to disclose this information at or prior to the time of sale; and because,  
24 on information and belief, PACCAR continues installing the MX-13 engine in trucks and  
25 selling those trucks to Class members even though it is unable to fully remedy the Fuel  
26 System Defect.

1           65.     Because of its superior knowledge, PACCAR had vastly superior bargaining  
2 power as compared with Plaintiff and the Class and used that superior bargaining power to  
3 compel Class members to unwittingly assume extreme financial risks, which they would  
4 never have assumed had they known the truth about the MX-13 engine. PACCAR robbed  
5 Plaintiff and the Class of the ability to make an intelligent decision as to whether they should  
6 accept the limitations in the Basic Engine Warranty given the existence of a “Warrantable  
7 Failure” that could not be repaired or replaced.

8           66.     PACCAR’s superior knowledge regarding the Fuel System Defect renders  
9 unconscionable PACCAR’s attempt to shorten the time limitation for bringing a cause of  
10 action under the Basic Engine Warranty to just twelve months. PACCAR sat in silence while  
11 its customers—Plaintiff and the Class—sought a permanent remedy for the Fuel System  
12 Defect when in fact a permanent remedy did not exist. PACCAR’s silence, combined with  
13 the fact that it treated the Fuel System Defect as a “Warrantable Failure” capable of repair or  
14 replacement, forestalled potential claims that might have been brought much earlier if  
15 PACCAR spoke up and told the truth. PACCAR should not benefit from its fraudulent  
16 concealment of this known (to PACCAR) problem.

17                                   ***The Experience of 10<sup>th</sup> Gear, LLC***

18           67.     In 2021, 10<sup>th</sup> Gear special-ordered a new 2022 model year Kenworth truck  
19 equipped with an EPA2021 MX-13 engine from MHC Topeka, an authorized Kenworth  
20 dealership.

21           68.     10<sup>th</sup> Gear took delivery of the truck in December 2021 and had it prepared for  
22 flatbed use.

23           69.     10<sup>th</sup> Gear began operating the truck in January 2022.

24           70.     By March 2022, with just over 1,000 miles on the engine, 10<sup>th</sup> Gear began  
25 experiencing problems with the fuel system of the truck. In particular, the fuel injectors  
26 began clogging.

1           71.     10<sup>th</sup> Gear brought the truck back to the dealership for repairs and repairs were  
2 made under the Basic Engine Warranty. 10<sup>th</sup> Gear suffered four weeks of costly downtime  
3 while the dealership tested, diagnosed and flushed the fuel system and replaced three fuel  
4 injectors.

5           72.     10<sup>th</sup> Gear again experienced problems with the fuel system of the truck when  
6 the engine reached 37,226 miles. 10<sup>th</sup> Gear brought the truck back to the dealership for  
7 repairs and repairs were made under the Basic Engine Warranty. 10<sup>th</sup> Gear suffered two and a  
8 half weeks of costly downtime while the local dealership tested, diagnosed and flushed the  
9 fuel system.

10          73.     10<sup>th</sup> Gear experienced problems with the fuel system of the truck a third time  
11 when the engine reached 49,710 miles. 10<sup>th</sup> Gear brought the truck back to the dealership for  
12 repairs and repairs were made under the Basic Engine Warranty. 10<sup>th</sup> Gear suffered one week  
13 of costly downtime while the dealership tested, diagnosed and flushed the fuel system and  
14 replaced two fuel injectors.

15          74.     10<sup>th</sup> Gear experienced problems with the fuel system of the truck a fourth time  
16 when the engine reached 152,929 miles. 10<sup>th</sup> Gear brought the truck back to the dealership  
17 for repairs and repairs were made under the Basic Engine Warranty. 10<sup>th</sup> Gear suffered two  
18 and a half weeks of costly downtime while the dealership tested, diagnosed and flushed the  
19 fuel system and replaced one fuel injector.

20          75.     10<sup>th</sup> Gear experienced problems with the fuel system of the truck a fifth time  
21 when the engine reached 164,661 miles. 10<sup>th</sup> Gear brought the truck back to the dealership  
22 for repairs and repairs were made under the Basic Engine Warranty. 10<sup>th</sup> Gear suffered one  
23 week of costly downtime while the dealership tested, diagnosed and flushed the fuel system  
24 multiple times.

25          76.     10<sup>th</sup> Gear experienced problems with the fuel system of the truck a sixth time  
26 when the engine reached 172,239 miles. 10<sup>th</sup> Gear brought the truck back to the dealership  
27

1 for repairs and repairs were made under the Basic Engine Warranty. The truck was down for  
2 two days while the dealership tested, diagnosed and flushed the fuel system.

3 77. 10<sup>th</sup> Gear experienced problems with the fuel system of the truck a seventh  
4 time when the engine reached 202,995 miles. The engine triggered a stop truck alarm while  
5 in route to Amarillo, Texas. 10<sup>th</sup> Gear brought the truck to a dealer in Amarillo for repairs.  
6 10<sup>th</sup> Gear suffered one week of costly downtime while the dealership tested, diagnosed and  
7 flushed the fuel system and replaced one fuel injector.

8 78. Finally, 10<sup>th</sup> Gear experienced problems with the fuel system of the truck an  
9 eighth time when the engine reached 206,601 miles. The engine triggered a stop truck alarm  
10 while in route to Houston, Texas. 10<sup>th</sup> Gear brought the truck to a dealer in Houston for  
11 repairs. 10<sup>th</sup> Gear suffered one week of costly downtime while the dealership tested,  
12 diagnosed and flushed the fuel system and replaced six fuel injectors.

### 13 TOLLING AND ESTOPPEL

14 79. Plaintiff's causes of action did not arise until Plaintiff discovered, or by the  
15 exercise of reasonable diligence should have discovered, that it was injured by PACCAR's  
16 wrongful conduct as alleged herein.

17 80. Because PACCAR concealed and failed to disclose the Fuel System Defect  
18 and because PACCAR affirmatively warranted and misrepresented that the MX-13 engine  
19 was free of defects, Plaintiff did not discover and could not have discovered the Fuel System  
20 Defect through reasonable diligence.

21 81. The applicable statutes of limitations have been tolled by PACCAR's knowing  
22 and active concealment of the material facts regarding the MX-13 engine, in particular facts  
23 regarding the Fuel System Defect and the unavailability of a permanent remedy for that  
24 defect, and by PACCAR's affirmative warranties and misrepresentations that the MX-13  
25 engine was free of defects.



82. PACCAR kept Plaintiff and the Class ignorant of vital information essential to pursue their claims, without any fault or lack of diligence on the part of Plaintiff and Class members.

83. PACCAR was under a continuous duty to disclose to Plaintiff and the Class the true character, quality, and nature of the MX-13 engine.

84. At all relevant times, and continuing to this day, PACCAR knowingly, affirmatively, and actively misrepresented and concealed the true character, quality, and nature of the MX-13 engine, in particular the Fuel System Defect and the fact that the Fuel System Defect could not be permanently remedied.

85. Plaintiff and the Class repeatedly presented their trucks to PACCAR's authorized dealerships and repair facilities for repair of the Fuel System Defect. Ineffectual repairs and replacements were performed only to have fuel injectors become clogged again.

86. Pursuant to the doctrines of equitable tolling, equitable estoppel, and fraudulent concealment, the period for bringing claims shall not be barred due to any statute of limitations. With respect to each and every cause of action herein, Plaintiff expressly pleads equitable tolling, equitable estoppel, and fraudulent concealment and its application thereto.

### **CLASS ACTION ALLEGATIONS**

87. Plaintiff brings this action pursuant to Rules 23(b)(2) & (3) of the Federal Rules of Civil Procedure.

88. Plaintiff brings this action on behalf of the following Class:

All persons and entities in the United States who purchased or leased a new vehicle equipped with a PACCAR EPA2021 MX-13 diesel engine and made a claim for repairs pursuant to the Basic Engine Warranty accompanying the vehicle for problems related to the vehicle's fuel injectors.

Excluded from the Nationwide Class is PACCAR, any officers or directors of PACCAR, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which PACCAR has or had a controlling interest.

1 89. Plaintiff reserves the right to amend the definition of the Class as appropriate  
2 after further discovery. Plaintiff also reserves the right to add Subclasses as appropriate in the  
3 event new parties are added to the lawsuit.

4 90. The members of the Class are so numerous that joinder of all members is  
5 impracticable. Although the precise size of Class remains unknown as of the date of this  
6 filing, PACCAR's annual report shows that it sold close to 200,000 trucks in 2022 alone. If  
7 even ten percent of those trucks were equipped with the MX-13 engine, the numerosity  
8 requirement would be easily satisfied.

9 91. Plaintiff's claims are typical of the claims of the members of the Class as all  
10 members of the Class purchased or leased a new vehicle equipped with a PACCAR EPA2021  
11 MX-13 diesel engine and made a claim for repairs pursuant to the Basic Engine Warranty  
12 accompanying the vehicle for problems related to the vehicle's fuel injectors.

13 92. Plaintiff will fairly and adequately protect the interests of the members of the  
14 Class and has retained counsel competent and experienced in class and complex litigation and  
15 class actions.

16 93. Plaintiff has no interests antagonistic to or in conflict with those of the Class.

17 94. Common questions of law and fact exist as to all members of the Class and  
18 predominate over any questions solely affecting individual members of the Class. Among the  
19 questions of law and fact common to the Class are:

- 20 A. PACCAR's knowledge regarding the Fuel System Defect;
- 21 B. PACCAR's disclosure or failure to disclose the Fuel System Defect;
- 22 C. The cause or causes of the Fuel System Defect;
- 23 D. The potential remedies, if any, for the Fuel System Defect;
- 24 E. Whether PACCAR's Basic Engine Warranty fails of its essential purpose; and
- 25 F. Whether the terms of PACCAR's Basic Engine Warranty are unconscionable.

26 95. A class action is superior to all other available methods for the fair and  
27 efficient adjudication of this controversy since joinder of all members is impracticable.

Furthermore, the damages suffered by individual Class members, while significant, may pale in comparison to the cost and complexity of this action. The expense and burden of individual litigation may make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

## **CAUSES OF ACTION**

### **Count I**

#### **Violation of the Washington Consumer Protection Act Wash. Rev. Code Ann. § 19.86.010, et seq.**

96. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

97. The Plaintiff is a “person” within the meaning of the Washington Consumer Protection Act (“CPA”).

98. PACCAR is a “person” within the meaning of the CPA.

99. At all times relevant hereto, PACCAR engaged in trade or commerce within the meaning of the CPA.

100. PACCAR’s actions as set forth herein constitute unfair acts or practices committed in the conduct of trade or commerce withing the meaning of the CPA.

101. PACCAR’s actions as set forth herein constitute deceptive acts or practices committed in the conduct of trade or commerce within the meaning of the CPA.

102. In particular, as set forth herein, PACCAR manufactured and sold tractor-trailer and vocational trucks equipped with the MX-13 engine through its subsidiaries Kenworth Truck Company and Peterbilt Motors Company knowing but choosing not to disclose the material fact that these trucks suffered from the Fuel System Defect.

103. Further, as set forth herein, PACCAR manufactured and sold tractor-trailer and vocational trucks equipped with the MX-13 engine through its subsidiaries Kenworth Truck Company and Peterbilt Motors Company knowing but choosing not to disclose the material fact that it could not permanently remedy the Fuel System Defect, and that repeated repairs would be necessary to keep the MX-13 engine operational.

1           104. PACCAR's actions were injurious to and in fact injured Plaintiff and the Class  
 2 and had the capacity to injure members of the general public by putting on the road trucks that  
 3 were unsafe. The MX-13 engine is typically installed in tractor-trailers used to transport  
 4 extremely heavy loads throughout the country. When the ability of these trucks to operate  
 5 and perform as intended is compromised—as when the engine loses power on a busy  
 6 highway—these trucks become a danger to anyone in or near them. PACCAR's actions thus  
 7 affected and continue to affect the public interest as well as the interest of Plaintiff and the  
 8 Class.

9           105. The acts alleged herein were committed in the course of PACCAR's business  
 10 as part of a generalized course of conduct. Repeated acts were committed prior to the act  
 11 involving Plaintiff, as the Fuel System Defect is a widespread problem that became evident  
 12 almost immediately after the EPA2021 MX-13 engine was introduced. PACCAR has known  
 13 about the Fuel System Defect ever since that time and yet, despite possessing that knowledge,  
 14 continued to market and sell trucks equipped with the defective and unsafe engine to unwary  
 15 consumers. There is a real and substantial potential for repetition of PACCAR's conduct and  
 16 PACCAR's conduct impacted scores of consumers.

17           106. PACCAR's customers, including Plaintiff herein, were less sophisticated than  
 18 PACCAR and lacked the knowledge and expertise to be able to immediately diagnose the  
 19 problems with the trucks or the fact that those problems could not be permanently remedied  
 20 by PACCAR's repairs.

21           107. Because Plaintiff and the Class allege PACCAR committed fraud primarily  
 22 through omissions, they are entitled to a presumption of reliance. This presumption is  
 23 particularly appropriate in this case, as no reasonable PACCAR customer would purchase a  
 24 truck equipped with a defective MX-13 engine at all or absent a steep discount on the price of  
 25 the truck if the customer knew the engine suffered from the Fuel System Defect.

26           108. Alternatively, to the extent the Court deems a presumption of reliance does not  
 27 apply, Plaintiff alleges it would not have purchased a truck equipped with the MX-13 engine

1 at all and/or under the terms then offered if the Fuel System Defect had been disclosed (which  
2 it was not).

3 109. PACCAR's actions were the proximate and actual cause of Plaintiff's injuries  
4 and the injuries to the Class. But for PACCAR's actions, Plaintiff and the Class would not  
5 have been injured.

6 110. The injuries to Plaintiff and the Class include but are not limited to the  
7 downtime associated with affecting repeated repairs necessary to temporarily correct the Fuel  
8 System Defect and render the MX-13 engine temporarily operational, and the diminution in  
9 value of these trucks on the resale market.

10 111. In addition to its actual damages, Plaintiff and the Class are entitled to treble  
11 damages and the reasonable attorney's fees and costs of bringing this action, all as allowed by  
12 the CPA.

13 112. Plaintiff and the Class seek injunctive relief and therefore will serve the  
14 Washington Attorney General with a copy of this Class Action Complaint as required by  
15 Wash. Rev. Code Ann. § 19.86.095.

16 **Count II**  
17 **Breach of Express Warranty**  
**(On Behalf of the Nationwide Class)**

18 113. Plaintiff incorporates the foregoing allegations as if fully set forth herein.

19 114. Plaintiff and the Class received PACCAR's Basic Engine Warranty at the time  
20 they purchased or leased their trucks.

21 115. Under PACCAR's Basic Engine Warranty, PACCAR warrants that the  
22 Engines "will be free from defects in materials and factory workmanship ('Warrantable  
23 Failures') appearing under normal commercial use and service during the time or mileage or  
24 hour limitations set forth in the attached Warranty Schedule."

25 116. Under PACCAR's basic engine warranty, PACCAR is required to "repair or  
26 replace[] 'Warrantable Failures' at authorized United States and Canadian PACCAR engine  
27 dealers, or an authorized PACCAR Engine Facility where applicable."

1 117. The Fuel System Defect is a “Warrantable Failure” within the meaning of the  
2 Basic Engine Warranty.

3 118. PACCAR has repeatedly and consistently treated the Fuel System Defect as a  
4 “Warrantable Failure” within the meaning of the Basic Engine Warranty.

5 119. PACCAR’s treatment of the Fuel System Defect as a “Warrantable Failure”  
6 within the meaning of the Basic Engine Warranty is determinative as to the issue of warranty  
7 coverage because, on information and belief, PACCAR knows and has known the precise  
8 cause and nature of the Fuel System Defect while Plaintiff and the Class lacked that  
9 knowledge. PACCAR was and is in the best position to evaluate whether the Fuel System  
10 defect is covered by the Basic Engine Warranty and has repeatedly and consistently  
11 determined that the Fuel System Defect is covered by the Basic Engine Warranty.

12 120. Further, through its voluntary and intentional action of accepting coverage for  
13 warranty claims involving the Fuel System Defect PACCAR has waived its right to contest  
14 whether the Fuel System Defect is covered by the Basic Engine Warranty.

15 121. PACCAR breached the Basic Engine Warranty and continues to breach the  
16 Basic Engine Warranty because it could not and cannot repair or replace the “Warranty  
17 Failures” so that the MX-13 engine is free from defects.

18 122. On information and belief, at the time Class members purchased vehicles  
19 equipped with the MX-13 engine, PACCAR knew that it could not honor the terms of its  
20 Basic Engine Warranty because the fuel system in the MX-13 engine was defective as set  
21 forth herein, and there was no way to permanently remedy the Fuel System Defect. The most  
22 that could be done was to affect a temporary repair that rendered the MX-13 engine  
23 temporarily operational. But even after this repair was performed, the MX-13 engine  
24 remained subject to failing at any time, even after minimal use, necessitating repeated repairs  
25 and the associated downtime. The MX-13 engine could not be made free from defects.

26 123. Plaintiff and the Class used the MX-13 engine in a manner consistent with its  
27 intended use and fulfilled every obligation required under the Basic Engine Warranty.

1           124. Class members gave PACCAR clear and timely notice of the Fuel System  
2 Defect and afforded PACCAR multiple opportunities to honor the terms of its Basic Engine  
3 Warranty. They brought their trucks to authorized dealers for repair, and PACCAR covered  
4 the Fuel System Engine Defect as a “Warrantable Failure.” But the trucks could not be  
5 repaired because the MX-13 employed a defective fuel system. And there was no way to  
6 replace the fuel injectors and/or the related components of the fuel system because non-  
7 defective parts had not yet been manufactured.

8           125. Because the “Warranty Failures” in the MX-13 engine could not be repaired or  
9 replaced so as to render them free from defects, the Class was left without a remedy and the  
10 Basic Engine Warranty failed and continues to fail of its essential purpose.

11           126. Moreover, the terms of the Basic Engine Warranty, including the terms  
12 excluding PACCAR’s liability for incidental and consequential damages, are unconscionable.  
13 The Basic Engine Warranty is a form adhesion contract that the Class members could not  
14 negotiate or refuse when buying or leasing their trucks. The contract is wholly one-sided  
15 because at the time Class members purchased trucks equipped with the MX-13 engine,  
16 PACCAR possessed knowledge regarding the Fuel System Defect that Class members did not  
17 possess and could not have acquired through reasonable investigation. PACCAR had vastly  
18 superior bargaining power and used that superior bargaining power to compel Class members  
19 to assume extreme financial risks they did not know they were assuming and would never  
20 have assumed had they known the truth about the MX-13 engine.

21           127. Furthermore, PACCAR forced Class members to unknowingly assume risks to  
22 their safety and physical well-being. The defect in the MX-13 engine can cause the engine to  
23 become inoperable at any time. Because the MX-13 engine is often installed in vehicles used  
24 for over-the-road trucking, this can result in the operators of those vehicles being stranded in  
25 the middle of nowhere, far away from any service center or other facility that might install a  
26 temporary fix to make the MX-13 engine operable again.



128. The defects in MX-13 engine have caused class members to experience significant downtime caused by the failure of the fuel system, for which there is not currently a permanent solution. The exclusion of incidental and consequential damages in the Basic Engine Warranty is procedurally and substantively unconscionable, and therefore unenforceable.

129. Plaintiff and the Class have been robbed of the benefit of their bargain: a reliable and operational engine free of material defects.

130. The repair and replacement services offered by PACCAR did not fix the problem with the MX-13 engine. As a result of PACCAR's failure to properly or adequately repair or replace the "Warrantable Failure" in the MX-13 engines installed in Plaintiff's vehicle and vehicles owned or leased by other Class members, Plaintiff and the Class have suffered actual, incidental, and consequential damages.

### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff and the Class demand judgment against PACCAR as follows:

- A. Determining that the instant action may be maintained as a class action under Rule 23 of the Federal Rules of Civil Procedure, and certifying Plaintiff as the Class representative and appointing undersigned counsel as counsel for the Class;
- B. Ordering PACCAR to provide notice to the Class of the Fuel System Defect;
- C. Awarding Plaintiff and the Class all permissible damages;
- D. Awarding Plaintiff and the Class punitive damages;
- E. Awarding Plaintiff and the Class treble damages as allowed by the CPA;
- F. Awarding Plaintiff and the Class their reasonable attorney's fees, expert witness fees and the costs of this lawsuit as allowed by the CPA;
- G. Awarding Plaintiff and the Class pre-judgment and post-judgment interest;
- H. Imposing civil penalties on PACCAR as allowed by the CPA;

- 1 I. Ordering PACCAR to pay for any future repairs to the fuel injectors of Class  
2 members' trucks until such time as a demonstrably permanent solution is found  
3 for the Fuel System Defect; and  
4 J. Awarding such other and further relief as this Court may deem just and proper.

5 **DEMAND FOR JURY TRIAL**

6 Plaintiff and the Class hereby demands trial by jury on all issues so triable.

7  
8 DATED this 15<sup>th</sup> day of December, 2023.

9 Attorneys for Plaintiff

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